

### Remarks

Responsive to the Office Action of December 13, 2002, the applicants have amended claims 1, 9, 17, 18, 48, 49 and have canceled claims 8, 15, 16, 44 and 47. New claims 50-60 have been added. In addition, detailed arguments in support of patentability of the claims are presented and re-examination is respectfully requested.

The Examiner is thanked for the courtesy of providing an interview to applicant's attorney on April 7, 2003. During the interview, claims 1, 9, 18, 48 and 49 were discussed with regards to the prior art of Gullett and Thagard. Amendments were proposed to the Examiner who agreed to consider the amendments.

### 35 U.S.C. § 112 Claim Rejections:

Claims 44 and 47 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims contain the limitation that the angle between the front side and one of the sides of the deck is formed between about the 12 o'clock and 2 o'clock positions. The Examiner stated that this is not disclosed in the original specification or drawings. Claims 44 and 47 have been canceled.

Claim 49 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 49 states "a deck having five sides, four of which are perpendicular in relation to each other". The Examiner stated that it is geometrically impossible to have four sides, which are all perpendicular to every other side. It was assumed for the purpose of examination on the merits that

applicant means that two sides were parallel to each other and the other two sides are perpendicular to those two sides, which forms a box shape. The applicants have amended claim 49 as suggested by the Examiner to clarify that two sides are parallel to each other and are perpendicular to two other sides.

**35 U.S.C. § 103 Claim Rejections:**

Claims 1-2, 5-10, 13, 15-16, 18-19, 23-24, 38-40, 44, 47 and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Thagard, et al. in view of Figure 2A of the specification.

Thagard was stated to disclose a deck (172) having at least three sides and at least one side wall, at least one cutting blade (240) mounted on the deck, a guard assembly (360) that includes an actuating member/holding member (380) and a guard (366) on the front of the mower, a movable rubber flap (364, Column 8, lines 51-52) which depends from the guard on a different plane, and a hinge (163) extending along the guard assembly.

The Examiner acknowledged that Thagard fails to disclose providing the guard along two of said at least three sides of the deck with two of the sides being normal and a third side being at an obtuse angle to the others. Referring to Figure 2A, the Examiner stated that a mower deck is known that has a guard that extends at an obtuse angle along two sides of the deck.

The Examiner concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to put the guard with its hinge of Thagard along two of the sides of the deck at an obtuse angle as shown in the prior art Figure 2A, in order to provide better access to the mower blade when cutting brush.

With regard to claims 2, 7, 10 and 19, the actuating member was stated to be a hydraulic cylinder and

piston (382). The actuating member is mounted to the deck and guard spaced from a hinge.

With regard to claims 8, 15 and 23-24, a top surface of the deck and a portion of a top surface of the guard were stated to be in the same plane and a portion not in the same plane (Fig. 3).

Claims 1, 3, 4, 9, 11-12, 13-14, 16-18, 20, 21, 24-25 and 48-49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gullett in view of Thagard. Gullett was stated to disclose a mower head including a deck (14) having at least four sides, side walls, a guard (24) attached by hinges, and an actuating member (23, 27). The hinges extended at an obtuse angle from two other sides of the mower deck (see attached drawing).

The Examiner acknowledged that Thagard discloses a rigid wall attached to the guard instead of a flap. Like Gullett, Thagard discloses a mower with a guard (360). Unlike Gullett, Thagard makes the downward wall on the guard a flap (364).

The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the guard of Gullett a flap with a guard as in Thagard, in order to provide a movable guard that still protects the operator from debris.

The Examiner further concluded that claims 3, 20, 4, 30, 11, 13, 14, 31, 16-18, 24, 17 and 25 were also obvious in view of Gullett and Thagard.

Claim 1 has been amended to recite that the plane of the guard in its entirety is coplanar with the plane of the deck in one orientation of the guard. This embodiment of the invention is shown in Figures 3B and 5B of the drawings of the instant application. In contrast, Thagard includes a guard assembly (360) which is positioned above the deck (172) and is never coplanar or in the same plane as the top surface of the deck. Furthermore, referring to Figure 2A of the

specification, page 8 at line 20 of the specification, the prior art guard (30) swings rearward above blades (32) and below the mower deck (34). In other words, the guard retracts into a housing below the mower deck (34) and above blades (32). Thus, whether the guard is either in its extended or its retracted positions, it is not coplanar with the deck.

Neither Thagard nor Figure 2A of the specification, either alone or in combination, discloses a guard which is coplanar with a plane of the deck. Furthermore, Gullett does not teach or suggest a guard which is coplanar with a top surface of the deck. Accordingly, claim 1, and claims 2-7 and 38 dependent thereon, are in condition for allowance.

Claim 9 has been amended to recite that a plane of the guard is parallel to and spaced from a plane of the deck in one orientation of the guard. This embodiment of the invention is shown in Figure 4B of the drawings. Thagard does not teach or suggest a guard wherein the plane of the guard is parallel to and spaced from a plane of the deck in an orientation of the guard. Rather, the top surface of the guard is at an angle with respect to the top surface of the deck. Thus, claim 9, and claims 10-14, 17 and 39 dependent thereon, are in condition for allowance.

Claim 18 has been amended to recite that the flap which is oriented in a plane spaced apart from the plane of the guard includes a plurality of discretely angled sections. In contrast, the flap (364) of Thagard does not include any angled sections. Rather, it is either a piece of movable rubber or a series of chains as shown in Figure 3 of Thagard. Furthermore, Figure 2A and Gullett do not teach or suggest any type of flap much less a flap with discretely angled sections. Thus, claim 18, and claims 19-25 and 40 dependent thereon, are also in condition for allowance over the prior art.

Claim 48 has been amended to recite an actuating

member including a linkage assembly comprising a first rigid link element mounted to the guard and a second rigid link element mounted to the deck. Neither Gullett nor Thagard et al. teaches or suggests a linkage assembly with a first rigid link connected to the ground and a second rigid link connected to the deck. Rather, Gullett utilizes flexible cables 21-23 operated by levers 25, 27. Thagard et al. uses hydraulic cylinders 182 to move the folding shroud section 165 which are connected to the hydraulic cylinders. There are no rigid links attached to a guard or the deck of Thagard. Accordingly, claim 48 is in condition over the prior art of record.

Claim 49 has been amended to recite a box-shaped deck with five sides of which two opposed sides are perpendicular in relation to other two opposed sides. The guard selectively pivots out of a plane of the deck. None of the prior art discussed above discloses a deck with five sides in which a fifth side is oriented at an obtuse angle in relationship to two sets of sides where two of the sides are perpendicular to the other two sides. Accordingly, claim 49 as amended is in condition for allowance over the prior art.

New claims 50-56 were added which each depend from claim 49. Claim 50 calls for the mower guard to include a flap which extends from the guard and is oriented in a plane spaced apart from the plane of the guard. Claim 51 calls for the flap to be movable in relationship to the guard. Claim 52 calls for a holding member for holding the guard in one rotational position in relationship to the deck. Claim 53 calls for the holding member to comprise a hydraulic cylinder and a piston where the cylinder includes a chamber surrounding the piston. Claim 54 calls for the guard to be attached to one of the hydraulic cylinder and piston and another of the hydraulic cylinder and piston is attached to the deck. Claim 55 calls for the deck to include a first wall comprising an approximately straight edge along which

the guard is mounted to the hinge. Claim 56 calls for a boom arm to which the deck is mounted. Each of these claims depends from claim 49 which as amended is considered to be in position for allowance. Accordingly, each of these dependent claims are also in condition for allowance.

Claim 57 has been added which calls for a mower head comprising a deck having at least four sides including a front side, at least one cutting blade rotatably mounted to the deck on an axis extending through the deck. The deck is disposed above and generally parallel to the blade. The guard assembly comprises a hinge extending at an angle between the front side and an adjacent one with the sides of the deck. A guard is pivotally attached to the deck via a hinge. The guard includes a portion protruding forwardly of a front edge of a front side of the deck.

Referring to the prior art of record, neither Thagard, Gullett, nor Figure 2A of the specification suggests or teaches a guard which has a portion which protrudes forwardly of a front edge of a front side of the deck. Rather each of the guards disclosed in the prior art does not extend beyond a front edge of the deck to which the guard is secured. Thus, claim 57 patentably defines over the art of record.

New claim 58 calls for holding member for holding the guard of claim 57 in a rotational position in relation to the deck. Claim 59 calls for the angle of the hinge to be at an obtuse angle. Claim 60 calls for a mower guard of claim 57 to further comprise a flap extending from the guard and movable in relationship to the guard and being oriented in a plane spaced apart from a plane of the guard. Since claim 57 is considered to be in condition for allowance, dependent claims 58-60 thereon are also in condition for allowance.


#### **Conclusion**

In view of the above amendments and remarks, applicant

submits that the present application is in condition for allowance. Notice of such allowance is hereby respectfully requested.

Respectfully submitted,

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